

RESOLUTION NO. 75238

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE VACATING A PORTION OF AN EXISTING 10-FOOT WIDE PUBLIC SERVICE EASEMENT LOCATED AT THE REAR OF LOT 22 OF TRACT 1593 (1542 LARKSPUR DRIVE); AND RESERVING A WIRE CLEARANCE EASEMENT OVER THE ENTIRE AREA BEING VACATED

WHEREAS, the vacation of the portion of the Public Utility Easement described in Section 3 of this Resolution is being conducted pursuant to and in accordance with the provisions of Chapter 3 of Part 3 of Division 9 of the Streets and Highways Code of the State of California; and

WHEREAS, on November 17, 2009, the City Council adopted Resolution No. 75161 ("Resolution of Intention") declaring its intention to vacate the portion of the Public Utility Easement described in Section 3 of this Resolution and to reserve a wire clearance easement over the area being vacated; and

WHEREAS, the Resolution of Intention gave notice that on Tuesday, the 15th day of December, 2009 at 1:30 p.m., in the Council Chambers of the City Council, in the City Hall of the City of San José, the Council would hear any and all persons interested in or objecting to the vacation of said portion of the Public Utility Easement; and

WHEREAS, the Resolution of Intention giving notice of the date, time and place of the public hearing was published in the manner prescribed by law; and

WHEREAS, notices of the proposed Public Utility Easement vacation, stating the purpose of the Resolution of Intention and the time and place set for the public hearing, were posted in the manner prescribed by law; and

WHEREAS, prior to the public hearing the plat map approved by the Director of Public Works on October 14, 2009, entitled "PLAT MAP SHOWING A PORTION OF THE PUBLIC UTILITY EASEMENT TO BE VACATED" (hereinafter "Plat Map") and showing the portion of the Public Utility Easement proposed for vacation and the Wire Clearance Easement proposed for reservation ("Plat Map"), was filed in the Office of the City Clerk and made available for examination by any persons desiring to do so; and

WHEREAS, on December 15, 2009, at 1:30 p.m. in the City Council chambers, the City Council heard any and all persons interested in or objecting to the proposed vacation of the portion of the Public Utility Easement, and received and considered all evidence submitted; and

WHEREAS, at the public hearing on the vacation of the portion of the Public Utility Easement described in Section 3 of this Resolution, the City Council had before it a report from the Director of Public Works to the City Council, dated October 26, 2009,

identified as "EXHIBIT A" and incorporated herein, and the Plat Map, identified as "EXHIBIT B" and incorporated herein;

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. The City Council hereby adopts the Report and, based upon the Report and all other evidence submitted at the public hearing, makes the following findings of relevant fact:

- A. This vacation is in conjunction with the site development by the property owner, and the portion of the Public Utility Easement described in Section 3 of this Resolution is no longer required as a public utility easement; and
- B. There are overhead public facilities located on the portion of the Public Utility Easement described in Section 3 of this Resolution; and
- C. All affected public utilities have been contacted and have no objections to the proposed vacation so long as a wire clearance easement is reserved over the entire area being vacated; and

SECTION 2. The City Council makes the following conclusions and findings based upon an analysis of the above facts:

- A. The Public Utility Easement described in Section 3 of this Resolution and depicted in the Plat Map is not necessary for present or prospective public street purposes; and
- B. Pursuant to the provisions of Section 892 of the Streets and Highways Code of the State of California, the portion of the Public Utility Easement proposed for vacation is not useful as a non-motorized transportation facility; and
- C. The public convenience and necessity requires the reservation of a wire clearance easement over the portion of the Public Utility Easement proposed for vacation; and
- D. The proposed vacation is consistent with the City's General Plan.

SECTION 3. Based on the above stated facts, conclusions and findings, the City Council hereby vacates the following Public Utility Easement subject to the reservation of a wire clearance easement over and beneath the subject area, as hereinafter described, for the purposes of constructing, maintaining, operating, replacing, removing or renewing the existing, or any future, public facilities located thereon:

The areas within the 10 foot wide Public Utility Easement (PUE) located at the southern-most portion of Lot 22 shown upon that certain map entitled "Tract 1593, Willow Pines", as said tract is recorded in Book 63 of Maps at Page 29, Santa Clara County Records. Said easement is located in the City of San Jose, County of Santa Clara, State of California, and are described as follows:

Area A:

That northern-most 5 foot portion of the 10 foot wide PUE, adjacent to the southerly boundary of said Lot 22 of Tract 1593 and,

Area B:

That 3 by 22 foot area that abuts the northerly 5 foot wide portion being vacated on said 10 foot wide PUE, located 2 feet from the easterly property line of said Lot 22 of Tract 1593.

SECTION 4. The City Clerk is directed to record a certified copy of this Resolution in the Santa Clara County Recorder's Office.

SECTION 5. From and after the date this Resolution is recorded, the public utility easement vacated will no longer constitute a public utility easement.

ADOPTED this 15th day of December, 2009, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,
KALRA, LICCARDO, NGUYEN, PYLE, REED.

NOES: NONE.

ABSENT: OLIVERIO.

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST:


LEE PRICE, MMC
City Clerk